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For the Record . . .

Inanimate Objects' Rights in Court

The following is excerpted from the dissenting opinion of Justice William O. Douglas in Sierra Club v. Morton, April 19. Citations and footnotes have been omitted.

Inanimate objects are sometimes parties in litigation. A ship has a legal personality, a fiction found useful for maritime purposes. The corporation sole—a creature of ecclesiastical law—is an acceptable adversary and large fortunes ride on its cases. The ordinary corporation is a "person" for purposes of the adjudicatory processes, whether it represents proprietary, spiritual, aesthetic, or charitable causes.

So it should be as respects valleys, alpine meadows, rivers, lakes, estuaries, beaches, ridges, groves of trees, swampland, or even air that feels the destructive pressures of modern technology and modern life. The river, for example, is the living symbol of all the life it sustains or nourishes — fish, aquatic insects, water ouzels, otter, fisher, deer, elk, bear, and all other animals, including man, who are dependent on it or who enjoy it for its sights, its sound, or its life. The river as plaintiff speaks for the ecological unit of life that is part of it. Those people who have a meaningful relation to that body of water—whether it be a fisherman, a canoeist, a zoologist, or a logger—must be able to speak for the values which the river represents and which are threatened with destruction.

I do not know Mineral King. I have never seen it nor traveled it, though I have seen articles describing its proposed "development" . . .

Mineral King is doubtless like other wonders of the Sierra Nevada such as Tuolumne Meadows and the John Muir Trail. Those who hike it, fish it, hunt it, camp in it, or frequent it, or visit it merely to sit in solitude and wonderment are legitimate spokesmen for it, whether they may be a few or many. Those who have that intimate relation with the inanimate object about to be injured, polluted, or otherwise despoiled are its legitimate spokesmen.



The Solicitor General . . . takes a wholly different approach. He considers the problem in terms of "government by the judiciary." With all respect, the problem is to make certain that the inanimate objects, which are the very core of America's beauty, have spokesmen before they are destroyed. It is, of course, true that most of them are under the control of a federal or state agency. The standards given those agencies are usually expressed in terms of the "public interest." Yet "public interest" has so many differing shades of meaning as to be quite meaningless on the environmental front. Congress accordingly has adopted ecological standards in the National Environmental Policy Act of 1969, and guidelines for agency action have been provided by the Council on Environmental Quality of which Russell E. Train is Chairman.

Yet the pressures on agencies for favorable action one way or the other are enormous. The suggestion that Congress can stop action which is undesirable is true in theory; yet even Congress is too remote to give meaningful direction and its machinery is too ponderous to use very often. The federal agencies of which I speak are not venal or corrupt. But they are notoriously under the control of powerful interests who manipulate them through advisory committees, or friendly working relations, or who have that natural affinity with the agency which in time develops between the regulator and the regulated. As early as 1894, Attorney General Olney predicted that regulatory agencies might become "industry-minded."

Years later a court of appeals observed, "the recurring question which has plagued public regulation of industry [is] whether the regulatory agency is unduly oriented toward the interests of the industry it is designed to regulate, rather than the public interest it is supposed to protect."

The Forest Service—one of the federal agencies behind the scheme to despoil Mineral King—has been notorious for its alignment with lumber companies, although its mandate from Congress directs it to consider the various aspects of multiple use in its supervision of the national forests.

The voice of the inanimate object, therefore, should not be stilled. That does not mean that the judiciary takes over the managerial functions from the federal agency. It merely means that before these priceless bits of Americana (such as a valley, an alpine meadow, a river, or a lake) are forever lost or are so transformed as to be reduced to the eventual rubble of our urban environment, the voice of the existing beneficiaries of these environmental wonders should be heard.

Perhaps they will not win. Perhaps the bulldozers of "progress" will plow under all the aesthetic wonders of this beautiful land. That is not the present question. The sole question is, who has standing to be heard?



Those who hike the Appalachian Trail into Sunfish Pond, New Jersey, and camp or sleep there, or run the Allagash in Maine, or climb the Guadalupe in West Texas, or who canoe and portage the Quetico Superior in Minnesota, certainly should have standing to defend those natural wonders before courts or agencies, though they live 3,000 miles away. Those who merely are caught up in environmental news or propaganda and flock to defend these waters or areas may be treated differently. That is why these environmental issues should be tendered by the inanimate object itself. Then there will be assurances that all of the forms of life which it represents will stand before the court—the pileated woodpecker as well as the coyote and bear, the lemmings as well as the trout in the streams. Those inarticulate members of the ecological group cannot speak. But those people who have so frequented the place as to know its values and wonders will be able to speak for the entire ecological community.

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The law is full of questions and technicalities usually of interest only to lawyers and judges, things like what is a "case," who has "standing" to bring it, what court has jurisdiction to hear it, and so on. Once in a while, one of these mundane things involves a matter of major importance and that was so last week when the Supreme Court ruled that the Sierra Club lacked standing to bring a law suit aimed at blocking development of Mineral King. Not only are those development plans, which would turn a wilderness area next to Sequoia National Park into a playground, of substantial importance but so is the basis on which the Court disposed of the case.

This question of standing involves who is entitled to bring a law suit. Generally speaking, the courts have held that only persons who are directly injured by governmental action may challenge that action in court. The rule is designed largely to ensure that real adversaries are involved in every case so that the issues will be fully litigated. In the old days, the question of who was injured and thus entitled to be heard was measured primarily in economic terms. But with the growing scope of governmental activity, the courts aided occasionally by Congress were forced to broaden this measurement. Corporations and other business entities have long been treated as persons and injuries now include all manner of things other than merely economic matters.

What the Sierra Club was attempting to do in the Mineral King case was to win an additional expansion so that groups like it could take environmental issues to court. It lost and, in the process, may have lost the battle against Mineral King. But the outcome ought to make it easier for other environmental cases to get to court. A majority of

the justices, in a careful opinion by Justice Stewart, clung to the old forms through which the law determines standing but made it clear that they accept the idea that a person can be injured through the change of an environment he loves just as through the loss of money. Thus, it appears that any individual who had camped or hiked or otherwise enjoyed the natural resources of Mineral King could have brought the case the Sierra Club just lost. Indeed, if the Sierra Club had taken the elementary precaution of asserting the rights of its individual members its case would probably still be alive today.

The minority of the justices—this was a 4 to 3 decision—voted to accept the basic idea of the Sierra Club and one of them wanted to go further. Elsewhere on this page today appears the dissenting opinion of Justice Douglas. It argues eloquently for a radical change which would recognize the place of rivers and trees and animals and birds. His opinion may well be the most imaginative to come out of the Court in years, perhaps since it decided in the last century that corporations are persons who have 14th Amendment rights. Beyond that, however, it places the battle over Mineral King in a better perspective. At stake there is not just a development but whether the Forest Service and the Department of Interior followed their own rules and various Acts of Congress in granting permission for it. It may be that they did. It may be that Mineral King ought to be developed and not saved as a remnant of our disappearing wilderness. But the questions raised by the Sierra Club are substantial and work on the project in that California valley ought not to proceed until they are answered, regardless of who has standing to raise them.

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